

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

EDWARD WAGNER,	)	
	)	Case No. C06-1400-RSL-JPD
Plaintiff,	)	
	)	
v.	)	
	)	
MICHAEL J. ASTRUE, Commissioner,	)	REPORT AND RECOMMENDATION
Social Security Administration,	)	
	)	
Defendant.	)	
_____	)	

I. INTRODUCTION AND SUMMARY CONCLUSION

On January 18, 2007, the parties in the above-captioned case stipulated that this matter be reversed and remanded to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g). Dkt. No. 11. On January 22, 2007, this Court ordered that the Commissioner's decision in this case be reversed and remanded for further administrative proceedings. Dkt. No. 12. The present matter comes before the Court on plaintiff's motion for attorney's fees, costs, and expenses under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412. Dkt. No. 14. Defendant filed a response opposing the motion (Dkt. No. 15), to which plaintiff replied. Dkt. No. 17. After careful consideration of the pleadings, supporting materials, governing law, and the balance of the record, the Court recommends that plaintiff's motion for award of attorney's fees be GRANTED IN PART and fees AWARDED, as set forth below.

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02 II. FACTS AND PROCEDURAL BACKGROUND

03 On January 22, 2007, this Court ordered that the Commissioner's decision in this case  
04 be reversed and remanded for further administrative proceedings. Dkt. No. 12. Judgment by  
05 the Court was entered on June 4, 2007. Dkt. No. 16. During the period between entry of the  
06 Court's order for remand, and the Court's entry of judgment to that effect, plaintiff's counsel  
07 requested an award of attorney's fees under the EAJA. Dkt. No. 13. Defendant challenged  
08 this motion for fees on May 30, 2007, based on the untimely and unreasonable nature of the  
09 fee request. Dkt. No. 15. After the Court's judgment was entered in this case, plaintiff filed  
10 a reply regarding attorney's fees stating that the initial motion for fees was premature because  
11 it was filed prior to the Court's entry of judgment, but nevertheless urging the Court to award  
12 fees at this time. Dkt. No. 17.

13 III. DISCUSSION

14 A. Timeliness of Plaintiff Counsel's Motion for Fees

15 In order to recover attorney's fees under the EAJA, the prevailing party "shall, within  
16 thirty days of final judgment in the action, submit to the court an application for fees and  
17 other expenses." 28 U.S.C. § 2412(d)(1)(B). A judgment becomes final once it is no longer  
18 appealable. 28 U.S.C. § 2412(d)(2)(G). In civil cases that include the United States as a  
19 party, the period for appeal is sixty days after entry of final judgment. Fed. R. App. P.  
20 4(a)(1)(B). The thirty day period for request of EAJA attorney's fees begins as soon as the  
21 right to appeal the Court's final judgment expires. *Shalala v. Schaefer*, 509 U.S. 292, 294  
22 (1993). The thirty day period for EAJA attorney's fee requests begins when the Court enters  
23 a final judgment, which must be "set forth . . . on a separate document." *Id.* at 302. (internal  
24 quotations omitted).

25 The Court entered a separate final judgment in this case on June 4, 2007. Dkt. No. 16.  
26 The time limits for requesting fees under the EAJA have therefore not expired, and plaintiff's

01 motion for attorney's fees is not time barred. Conversely, plaintiff's motion is premature as it  
02 was filed prior to entry of a final judgment in the case. As both parties make clear in their  
03 briefs however, this Court has the discretion to grant attorney's fees even when untimely.  
04 Dkt. No. 15, 17. *See also Van v. Barnhart*, 483 F.3d 600, 603 n.2 (9th Cir. 2007). A grant of  
05 EAJA fees prior to entry of a final judgment would not be prudent. *See, e.g., Sohapp v.*  
06 *Hodel*, 911 F.2d 1312, 1321 (9th Cir. 1990) (court refused to grant fees to petitioner because  
07 a final judgment had not yet been entered). However, in this case the judgment has now been  
08 entered, and as a practical matter the Court finds that the request for attorney's fees is now  
09 proper and should be considered.

10 B. Reasonableness of Fees Requested

11 The EAJA entitles prevailing parties to "reasonable fees and expenses of attorneys."  
12 28 U.S.C. § 2412(b). Reasonable fees may be calculated based on "the number of hours  
13 reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley v.*  
14 *Eckerhart*, 461 U.S. 424, 433 (1983). The only challenge made by the defendant in this case is  
15 to the reasonableness of time expended by plaintiff's counsel, the defendant does not challenge  
16 the reasonableness of the hourly rate. Dkt. No. 15.


17 The Court finds that the hourly rate charged by plaintiff's counsel is reasonable. As to  
18 the number of hours included in plaintiff's motion, the Court finds that these fees are  
19 reasonable with the exception of the unsubstantiated charges for teleconference with a party  
20 identified only as "RH," and time charged to review the Court's order allowing plaintiff to  
21 proceed *in forma pauperis*. Plaintiff's request for an additional three hours spent engaged in  
22 the present fee request is also permissible under the EAJA and should be granted. *See Comm'r*  
23 *of INS v. Jean*, 496 U.S. 154, 163 (1990) (finding that district courts have wide discretion in  
24 awarding fees).

25 IV. CONCLUSION

26 Plaintiff's attorney, Mr. George Andre Fields, should be awarded attorney's fees in

01 the amount of \$2,382.56 based on 14.55 hours work at the rate of \$163.75 per hour, as well  
02 as expenses in the amount of \$13.95 under the EAJA, 28 U.S.C. § 2412. A proposed Order  
03 Awarding Attorney's Fees, Costs, and Expenses accompanies this Report and  
04 Recommendation.

05 DATED this 26th day of June, 2007.

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08 JAMES P. DONOHUE  
09 United States Magistrate Judge  
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